IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 8TH MARCH 2007 / 17TH PHALGUNA 1928

OP.No. 728 of 2002(J)

PETITIONER:
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1. DHARMANKUTTY, CHANGANARA,
KIZHAKKETHARA, KOLLAMKODE, PALAKKADU.

2. SUDHAKARAN, -DO- -DO-.

3. SACHIDANANDAN, -DO- -DO-

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.N.K.KARNIS

RESPONDENTS:
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1. MUTHALA MADA SERVICE CO-OPERATIVE BANK,
MUTHALAMADA P.O., CHITTOOR, PALAKKADU,REPRESENTED
BY ITS SECRETARY.

2. ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), CHITTOOR,PALAKKADU DISTRICT.

3. KERALA CO-OPERATIVE TRIBUNAL,
TRIVANDRUM.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 08/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.No. 728/2002

ORDER ON CMP NO. 1228/2002 IN O.P.No. 728/2002.

DISMISSED.

08/03/2007. SD/- (C.N.RAMACHANDRAN NAIR, JUDGE).

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1 COPY OF THE AWARD OF THE 2ND RESPONDENT DATED 28/08/1998 IN ARC.12/1985.

EXT.P2 COPY OF THE ORDER OF THE 3RD RESPONDENT IN APPENDIX.152/ 1998 DATED 28/9/2000.

EXT.P3 COPY OF THE AGREEMENT REFERRED TO IN EXTS.p1 & p2 BETWEEN THE 1ST RESPONDENT AND VELU, OWNER OF SACHINDANANDA RICE MILL.

EXT.P4 COPY OF THE PLAINT IN ARC.12/1985 FILED BEFORE THE 2ND RESPONDENT BY THE 1ST RESPONDENT DATED 10/10/1985.

EXT.P5 COPY OF THE WRITTEN STATEMENT / OBJECTION DATED 19/10/1994 FILED BY LATE VELU.

// TRUE COPY //

PA TO JUDGE

jg

C.N.RAMACHANDRAN NAIR, J.

O.P. No. 728 of 2002 J

Dated, this the 8th day of March, 2007

J U D G M E N T

Petitioner is challenging Ext.P2 order of the Tribunal awarding an amount of Rs. 85,880/- against the petitioner and other legal heirs of the deceased Velu for non-delivery of rice after hulling the paddy supplied by the 1st respondent society under Ext.P3 agreement.

2. I have heard the Senior Counsel Shri. N. Sukumaran appearing for the petitioner and the learned counsel appearing for the 1st respondent. I have already gone through Ext.P2 order of the Appellate Tribunal. The petitioner's late father undertook contract with 1st respondent society for hulling and supplying of rice from out of the paddy procured by the 1st respondent from farmers @ 67.5% of the weight of the paddy supplied. However, deceased contractor committed default, in as much as, delivery of rice was short by 230.3 quintals on account of failure in supply of rice, therefore, the Society charged price @ Rs. 235/quintal plus interest at agreed rate totaling Rs. 85,880/-. Even though Arbitrator rejected claim of the society, the Tribunal upheld the claim and awarded claim amount based on evidence produced by the Society.

On going through the orders and after hearing parties, I do not find any ground to interfere with the findings of the Tribunal about the quantity and value of the rice to be paid for by the deceased. It is seen that the accrued interest is @ 18% per annum, which obviously runs from the date of default for supplying the rice and not from the date of raising total demand as contested by the learned counsel for the petitioner. I do not find any ground to interfere with the findings entered by the Tribunal, which is the final fact finding authority. However, having regard to the nature of contest in the case and since the defaulter is no more, I feel complete interest can be waived, provided, petitioners and other legal heirs clear the liability by making payment of the award amount in six equal monthly installments excluding collection charges, first of which will be paid on or before 31/03/2007 and balance on the last date of five succeeding months. In case of failure recovery can be made with interest.

This original petition is disposed of as above.

(C.N.RAMACHANDRAN NAIR, JUDGE.)

jg